

ORIGINAL

OPEN MEETING ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

57

COMMISSIONERS

2006 APR 13 P 3:47

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE COMMISSION ON ITS  
OWN MOTION INVESTIGATING THE FAILURE  
OF BEAVER VALLEY WATER COMPANY, AN  
ARIZONA PARTNERSHIP, TO COMPLY WITH  
COMMISSION DECISION NO. 66388, 68083 AND  
A.A.C. R14-2-411(D)(4).

DOCKET NO. W-02015A-06-0223

**NOTICE OF FILING  
COMPLAINT AND PETITION FOR  
ORDER TO SHOW CAUSE**

Arizona Corporation Commission Staff hereby provides notice that it is filing the attached  
complaint and petition for order to show cause.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of April, 2006.

*David Ronald*

David M. Ronald  
Attorney, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007  
(602) 542-3402

Original and thirteen (13) copies  
of the foregoing were filed this  
13<sup>th</sup> day of April, 2006 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

...

...

...

...

...

1 Copy of the foregoing mailed this  
2 13<sup>th</sup> day of April, 2006 to:

3 Mr. Edgar M. Delaney  
4 Delaney & Melknoff, P.C.  
5 1013 East Washington  
6 Phoenix, Arizona 85034  
7 **Via First Class mail and  
8 Certified Mail  
9 Return Receipt Requested**

8 R. E. Ward  
9 Beaver Valley Water Company  
10 Post Office Box 9031  
11 Phoenix, Arizona 85068  
12 **Via First Class mail and  
13 Certified Mail  
14 Return Receipt Requested**

12 Mr. Michael Davoren  
13 Post Office Box 421  
14 Payson, Arizona 85541  
15 **Via First Class mail and  
16 Certified Mail  
17 Return Receipt Requested**

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1                               **BEFORE THE ARIZONA CORPORATION COMMISSION**

2   JEFF HATCH-MILLER  
      Chairman  
3   WILLIAM A. MUNDELL  
      Commissioner  
4   MARC SPITZER  
      Commissioner  
5   MIKE GLEASON  
      Commissioner  
6   KRISTIN K. MAYES  
      Commissioner

8   IN THE MATTER OF THE COMMISSION ON ITS  
9   OWN MOTION INVESTIGATING THE FAILURE  
10  OF BEAVER VALLEY WATER COMPANY, AN  
11  ARIZONA PARTNERSHIP, TO COMPLY WITH  
12  COMMISSION DECISION NO. 66388, 68083 AND  
13  A.A.C. R14-2-411(D)(4).

DOCKET NO. W-02015A-06-0223

**COMPLAINT AND PETITION  
FOR AN ORDER TO SHOW CAUSE**

12       Staff of the Utilities Division ("Staff") of the Arizona Corporation Commission  
13 ("Commission"), for its Complaint and Petition for Order to Show Cause against BEAVER  
14 VALLEY WATER COMPANY alleges:

15                               **JURISDICTION**

16       1.     The Commission has jurisdiction to hear complaints against public service  
17 corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to supervise and  
18 regulate public service corporations pursuant to Article XV of the Arizona Constitution and Title  
19 40 of the Arizona Revised Statutes.

20       2.     Respondent Beaver Valley Water Company ("BVWC") is a public service  
21 corporation as defined by Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-  
22 282 and was issued a Certificate of Convenience and Necessity ("CC&N") by the Commission, as  
23 described in Decision No. 38565 (July 5, 1966). The CC&N was conditioned upon compliance  
24 with Arizona Law and the Commission's Rules.

25                               **FACTUAL BACKGROUND**

26       3.     On July 5, 1966, BVWC received a CC&N to provide water service in Gila County.

27       4.     On April 28, 2003, BVWC filed with the Commission an application requesting  
28 authority to increase its rates and charges.

1           5.       On October 6, 2003, in Decision No. 66388, the Commission ordered that the rates  
2 and charges reflected in the order shall be effective for all services provided on the first day of the  
3 month following the date that both of the following have occurred: 1) the Commission has  
4 approved an application for transfer or sale of BVWC's assets and transfer of its CC&N to a fit  
5 and proper entity; and 2) BVWC has filed written documentation from the Arizona Department of  
6 Environmental Quality ("ADEQ") stating that its system has no maximum contaminant level  
7 violations and is serving water that meets the water quality standards required by Arizona  
8 Administrative Code ("AAC"), Title 18, Chapter 4.

9           6.       On October 1, 2003, BVWC filed with the Commission an application for approval  
10 of the sale of its assets and the transfer of its CC&N to Michael Davoren ("Mr. Davoren"), a Sole  
11 Proprietorship.

12           7.       On August 17, 2005, in Decision No. 68083, the Commission ordered that the  
13 application of BVWC to transfer its assets and its CC&N to Mr. Davoren shall be granted subject  
14 to BVWC's timely compliance with the following:

- 15           1) BVWC shall demonstrate that it is transferred free and clear from any  
16           unauthorized debts, liens or encumbrances within 90 days of the effective date  
17           of this Decision (Due Date: November 17, 2005). BVWC filed evidence of  
            this compliance item on November 1, 2005;
- 18           2) BVWC shall file evidence of ADEQ water quality compliance within 90 days  
19           of the Decision (Due Date: November 17, 2005). Staff worked with ADEQ to  
20           assist BVWC in getting the proper report filed. On December 14, 2005, ADEQ  
21           provided Staff with a letter stating that "the water quality of BVWC, PWS 04-  
22           004, meets ADEQ drinking water standards except for disinfection byproducts  
23           ("DBP") and maximum residual disinfection levels ("MRDL") sampling. The  
24           water system has failed to sample during the warmest time of the year, so  
25           ADEQ can not determine if the water system meets the DBP and MRDL  
26           parameters". On April 5, 2006, Staff received a copy of an ADEQ inspection  
27           report citing multiple violations of ADEQ compliance items indicating that  
28           BVWC is out of compliance.
- 3) BVWC shall calculate the rate overcharge amount for each customer for each  
            month after November 2003 within 90 days of the Decision (due date:  
            November 17, 2005). Staff worked with Mr. Davoren in verifying that the  
            customer overcharge calculations were correct.
- 4) BVWC shall notice its customers of the overcharges and the manner in which  
            credits will be applied, in a form acceptable to Staff, by means of an insert in its  
            regular monthly billing within 90 days of the effective date of the Decision

(Due Date: November 17, 2005). Staff worked with Mr. Davoren and finalized an insert noticing the customers of the overcharges and the manner in which credits would be applied. According to a letter received from Mr. Davoren on January 20, 2006, the customer refund notice was mailed to the affected customers of BVWC.

- 5) BVWC shall refund to its customers credits as described herein and the overcharge shall be terminated as of the date of this Decision (August 17, 2005). On December 16, 2005, Staff contacted Mr. Davoren to verify that he received the final calculations of the overcharges and the Staff approved notice to customers. Staff inquired of Mr. Davoren as to the termination of the overcharge and he stated that he was still charging the customers the unauthorized rates. Staff re-iterated the ordering paragraph from Decision No. 68083 that states BVWC "shall refund to its customers credits as described herein and the overcharge shall be terminated as of the date of this Decision". Staff mailed a letter dated December 16, 2005, to Mr. Davoren asking him to contact the Commission when the refunding of credits to the customers began. On April 3, 2006, Staff contacted Mr. Davoren to verify whether the customer credits had commenced. Mr. Davoren stated that BVWC had been issuing credits for two months; however, the overcharge had not been terminated.
- 6) If BVWC fails to demonstrate compliance with the above stated conditions within 90 days of the effective date of the Decision (Due Date: November 17, 2006), a penalty shall be imposed against BVWC in the amount of \$10,500. As of the date of this filing, BVWC has not made payment to the Commission for failure to demonstrate compliance with the Commissions Decision.

8. On November 14, 2005, Mr. Edgar M. Delaney docketed a letter requesting a forty five (45) day extension to comply with the orders in Commission Decision No. 68083, dated August 17, 2005.

9. On December 5, 2005, Staff filed a Motion to Extend Compliance deadlines in Decision No. 68083 for 45 days. This would extend the compliance deadline to January 2, 2006. If compliance requirements were not completed by the end of the 45 day extension, Staff would initiate an Order to Show Cause ("OSC") against BVWC.

10. On February 22, 2006, Michael Davoren, on Behalf of BVWC, filed a Request for Rehearing in Docket No W-02015A-03-0268, challenging the orders in Commission Decision No. 66388. This Request for Rehearing has been denied by operation of law.

11. BVWC continues to provide water service in Gila County.

**COMPLAINT****Count One****(Violation of Commission Decision No. 66388)**

12. Staff incorporates the allegations of Paragraphs 1-11 into this count.

13. Per Commission Decision No. 66388, BVWC was ordered "to install a well meter and reconnect its existing well to the system as a backup source no later than December 1, 2004. If BVWC determines that reconnection of the well is not feasible for technical or economic reasons, BVWC should report to the Director of the Utilities Division no later than October 6, 2004". BVWC has failed to comply with the Commissions Decision.

**Count Two****(Violation of Commission Decision No. 66388)**

14. Staff incorporates the allegations of Paragraphs 1-13 into this count.

15. Per Commission Decision No. 66388, BVWC was to "construct a 20,000 gallon storage tank project to comply with ADEQ requirements and to submit a copy of the Certificate of Approval of Construction issued by ADEQ for the project to the Director of the Utilities Division no later than December 1, 2004." BVWC has failed to comply with the Commissions Decision.

**Count Three****(Violation of Commission Decision No. 68083)**

16. Staff incorporates the allegations of Paragraphs 1-15 into this count.

17. Per Commission Decision No. 68083, BVWC shall file evidence of ADEQ water quality compliance within 90 days of the Decision. Per letter dated April 5, 2006, BVWC is currently out of compliance with ADEQ water quality and monitoring standards.

**Count Four****(Violation of Commission Decision No. 68083)**

18. Staff incorporates the allegations of Paragraphs 1-17 into this count.

19. Per Commission Decision No. 68083, BVWC shall refund to its customers credits as and the described herein overcharge shall be terminated as of August 17, 2005. BVWC has failed to comply with the Commission's Decision.

**Count Five****(Violation of Commission Decision No. 68083)**

20. Staff incorporates the allegations of Paragraphs 1-19 into this count.

21. Per Commission Decision No. 68083, failure to demonstrate compliance with this decision within 90 days of the effective date (90 days would have been November 17, 2005) of the Decision shall result in the imposition of a penalty against BVWC in the amount of \$10,500. BVWC filed a request for a 45 day extension of time to comply (extension date: January 2, 2006). BVWC has failed yet to comply with the Commission's Decision.

**Count Five****(Violation of A.A.C. R14-2-411(D)(4))**

22. Staff incorporates the allegations of Paragraphs 1-21 into this count.

23. A.A.C. R14-2-411(D)(4) requires all utilities to submit an annual report on or before the 15<sup>th</sup> day of April for the preceding calendar year. BVWC has failed to submit an annual report for years 2003, 2004 and 2005. The failure to file annual reports for years 2003, 2004 and 2005 constitutes a violation of A.A.C. R14-2-411(D)(4).

**RELIEF**

**WHEREFORE**, Staff prays that the Commission issue:

24. An **ORDER TO SHOW CAUSE** directing BVWC to show cause:

- A. why it has failed to install a well meter and reconnect its existing well to the system as a backup source as described herein;
- B. why it has failed to construct a 20,000 gallon storage tank project to comply with ADEQ requirements and to submit a copy of the Certificate of Approval of Construction as described herein;
- C. why it has failed to come into compliance with ADEQ water quality and monitoring standards as described herein;
- D. why it has failed to terminate the overcharge as of August 17, 2005, as described herein;
- E. why it has failed to make payment of \$10,500 to the State of Arizona for failure to comply in a timely manner with Commission Decision No. 68083 as described herein.

F. why it has failed to submit an annual report for years 2003, 2004 and 2005 as described herein.

25. After the conclusion of appropriate proceedings, a final **OPINION AND ORDER**:

A. finding that BVWC has violated Commission Decision No. 66388;

B. finding that BVWC has violated Commission Decision No. 68083;

C. finding that BVWC has violated A.A.C. R14-2-411(D)(4) and assess a civil penalty against BVWC pursuant to Arizona Revised Statutes Section 40-424 and 40-425 in an amount not less than \$100 nor more than \$5,000 for each violation;

D. ordering such other relief as the Commission may find just and reasonable.

21. A proposed order incorporating the recommendations of Paragraphs 1-20 is attached hereto as Exhibit 1.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of April, 2006.

*David M. Ronald*

David M. Ronald  
Attorney, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007  
(602) 542-3402

The original and thirteen (13) copies of the foregoing were filed this 13<sup>th</sup> day of April, 2006 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Copy of the foregoing mailed this 13<sup>th</sup> day of April, 2006 to:

Mr. Edgar M. Delaney  
Delaney & Melknoff, P.C.  
1013 East Washington  
Phoenix, Arizona 85034

**Via First Class mail and  
Certified Mail**

**Return Receipt Requested**



1 Mr. R. E. Ward  
2 Beaver Valley Water Company  
3 Post Office Box 9031  
4 Phoenix, Arizona 85068  
5 **Via First Class mail and**  
6 **Certified Mail**  
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8 Mr. Michael Davoren  
9 Post Office Box 421  
10 Payson, Arizona 85541  
11 **Via First Class mail and**  
12 **Certified Mail**  
13 **Return Receipt Requested**

14 Mr. Christopher C. Kempley  
15 Chief Counsel, Legal Division  
16 Arizona Corporation Commission  
17 1200 West Washington  
18 Phoenix, Arizona 85007

19 Mr. Ernest G. Johnson  
20 Director, Utilities Division  
21 Arizona Corporation Commission  
22 1200 West Washington  
23 Phoenix, Arizona 85007

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 JEFF HATCH-MILLER  
Chairman

3 WILLIAM A. MUNDELL  
Commissioner

4 MARC SPITZER  
Commissioner

5 MIKE GLEASON  
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6 KRISTIN K. MAYES  
Commissioner

8 IN THE MATTER OF THE COMMISSION ON ITS  
OWN MOTION INVESTIGATING THE FAILURE  
9 OF BEAVER VALLEY WATER COMPANY, AN  
ARIZONA PARTNERSHIP, TO COMPLY WITH  
10 COMMISSION DECISION NO. 66388, 68083 AND  
A.A.C. R14-2-411(D)(4).

DOCKET NO. W-02015A-06-0223

**ORDER TO SHOW CAUSE**

**DECISION NO. \_\_\_\_\_**

11 **OPEN MEETING**  
12 **MAY 2 AND 3, 2006**  
13 **PHOENIX, ARIZONA**

14 **BY THE COMMISSION:**

15 On April 18, 2006, Staff ("Staff") of the Utilities Division ("Division") of the Arizona  
16 Corporation Commission ("Commission") filed a Complaint and Petition for Order to Show Cause  
17 against Beaver Valley Water Company ("BVWC"), an Arizona Corporation. Staff seeks various  
18 relief, including the issuance of an Order to Show Cause against the Respondents. Having considered  
19 the entire record herein and being fully advised in the premises, the Commission finds, concludes and  
20 orders that:

21 **FINDINGS OF FACT**

22 1. On July 5, 1966, BVWC received a Certificate of Convenience and Necessity  
23 ("CC&N") to provide water service in Gila County.

24 2. On April 28, 2003, BVWC filed with the Commission an application requesting  
25 authority to increase its rates and charges.

26 ...

27 ...

28 ...

1           3.       On October 6, 2003, in Decision No. 66388, the Commission ordered that the rates  
2 and charges reflected in the order shall be effective for all service provided on the first day of the  
3 month following the date that both of the following have occurred: 1) the Commission has approved  
4 an application for transfer or sale of the BVWC's assets and transfer of its CC&N to a fit and proper  
5 entity; and 2) BVWC has filed written documentation from the Arizona Department of  
6 Environmental Quality ("ADEQ") stating that its system has no maximum contaminant level  
7 violations and is serving water that meets the water quality standards required by Arizona  
8 Administrative Code ("AAC"), Title 18, Chapter 4.

9           4.       On October 1, 2003, BVWC filed with the Commission an application for approval of  
10 the sale of its assets and the transfer of its CC&N to Michael Davoren, a Sole Proprietorship.

11           5.       On February 22, 2006, Michael Davoren, on Behalf of BVWC, filed a Request for  
12 Rehearing in Docket No W-02015A-03-0268, challenging the orders in Commission Decision  
13 No. 66388. This Request for Rehearing has been denied by operation of law.

14           6.       On April 5, 2006, Staff received a copy of an ADEQ inspection report citing multiple  
15 violations of ADEQ compliance items indicating that BVWC is out of compliance.

16           7.       Per Commission Decision No. 66388, BVWC was ordered "to install a well meter and  
17 reconnect its existing well to the system as a backup source no later than December 1, 2004. If  
18 BVWC determines that reconnection of the well is not feasible for technical or economic reasons,  
19 BVWC should report to the Director of the Utilities Division no later than October 6, 2004".

20           7.       BVWC has failed to install a well meter per the Commissions Decision.

21           8.       BVWC has failed to reconnect its existing well to the system as a backup source per  
22 the Commissions Decision.

23           9.       Per Commission Decision No. 66388, BVWC was to "construct a 20,000 gallon  
24 storage tank project to comply with ADEQ requirements and to submit a copy of the Certificate of  
25 Approval of Construction issued by ADEQ for the project to the Director of the Utilities Division no  
26 later than December 1, 2004."

27           10.       BVWC has failed to construct a 20,000 gallon storage tank per the Commissions  
28 Decision.

11. BVWC has failed to submit a copy of the Certificate of Approval of Construction from ADEQ per the Commissions Decision.

12. Per Commission Decision No. 68083, BVWC shall file evidence of ADEQ water quality compliance within 90 days of the Decision. Per letter dated April 5, 2006, BVWC is currently out of compliance with ADEQ water quality and monitoring standards.

13. Per Commission Decision No. 68083, BVWC shall refund to its customers credits as described herein and the overcharge shall be terminated as of August 17, 2005.

14. BVWC has failed to terminate the overcharge to its customers per the Commissions Decision.

15. Per Commission Decision No. 68083, failure to demonstrate compliance with the Orders in this Decision within 90 days of the effective date shall result in the imposition of a penalty against BVWC in the amount of \$10,500, said payment to be made to the State of Arizona and presented to the Arizona Corporation Commission.

16. BVWC has failed to make payment of this penalty per the Commissions Decision.

17. A.A.C. R14-2-411(D)(4) requires all utilities to submit an annual report on or before the 15<sup>th</sup> day of April for the preceding calendar year.

18. BVWC has failed to submit an annual report for years 2003, 2004 and 2005.

19. BVWC continues to provide water service in Gila County.

20. Staff requests that we issue an Order to Show Cause directing BVWC to show cause:

- A. why it has failed to install a well meter and reconnect its existing well to the system as a backup source as described herein;
- B. why it has failed to construct a 20,000 gallon storage tank project to comply with ADEQ requirements and to submit a copy of the Certificate of Approval of Construction as described herein;
- C. why it has failed to come into compliance with ADEQ water quality and monitoring standards as described herein;
- D. why it has failed to terminate the overcharge as of August 17, 2005, as described herein;

1 E. why it has failed to make payment of \$10,500 to the State of Arizona for  
2 failure to comply in a timely manner with Commission Decision No. 68083 as  
3 described herein.

4 F. why it has failed to submit an annual report for years 2003, 2004 and 2005 as  
5 described herein.

6 21. Staff's requests described in Finding of Fact No. 20 are reasonable.

### 7 CONCLUSIONS OF LAW

8 1. BVWC is a public service corporation within the meaning of Article XV of the  
9 Arizona Constitution and is subject to the jurisdiction of the Commission.

10 2. The Commission has jurisdiction over the subject matter of Staff's Complaint and  
11 Petition for Order to Show Cause.

12 3. Notice of this proceeding has been given in accordance with law.

13 4. It is lawful and in the public interest to issue the requested Order to Show Cause  
14 against the Respondent as described in Finding of Fact 20.

### 15 ORDER

16 IT IS THEREFORE ORDERED that BVWC shall appear and show cause at a place and time  
17 designated by the Hearing Division:

18 (1) why BVWC has violated Commission Decision No. 66388 as described herein;

19 (2) why BVWC has violated Commission Decision No. 68083 as described herein;

20 (3) why BVWC has violated A.A.C. R14-2-411(D)(4).

21 IT IS FURTHER ORDERED that if BVWC intends to appear and show cause as ordered  
22 above, it shall file within 10 days of the effective date of this Order a preliminary statement  
23 describing how it will make the showing of cause. This filing must include an Answer to Staff's  
24 Complaint if the filing Respondent has not yet filed an Answer.

25 ...

26 ...

27 ...

28 ...

IT IS FURTHER ORDERED that the Hearing Division shall forthwith schedule further appropriate proceedings.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

BRIAN C. McNEIL  
Executive Director

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

EGJ:KDB:lm\DMR:sab

1 SERVICE LIST FOR: Beaver Valley Water Company  
2 Docket Nos. W-02015A-06-0223

3 Mr. Edgar M. Delaney  
4 Delaney & Melknoff, P.C.  
5 1013 East Washington  
6 Phoenix, Arizona 85034

7 Mr. R. E. Ward  
8 Beaver Valley Water Company  
9 Post Office Box 9031  
10 Phoenix, Arizona 85068

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12 Post Office Box 421  
13 Payson, Arizona 85541

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17 1200 West Washington  
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